

PAPER – 2: CORPORATE AND OTHER LAWS

PART – I: ANNOUNCEMENTS STATING APPLICABILITY FOR MAY, 2023 EXAMINATIONS

Applicability for May, 2023 examinations

The Study Material (September 2021 edition) is applicable for May, 2023 examinations. This study material is updated for all amendments till 30th April, 2021.

Further, all relevant amendments/ circulars/ notifications etc. in the Company law part for the period 1st May, 2021 to 31st October, 2022 are mentioned below:

THE COMPANIES ACT, 2013

I. Chapter 1: Preliminary

Notification G.S.R. 700(E) dated 15th September, 2022

The Central Government has amended Companies (Specification of definition details) Rules, 2014, through the Companies (Specification of definition details) Amendment Rules, 2022.

Amendment:

In the Companies (Specification of definition details) Rules, 2014,

in **Rule 2**, in sub-rule (1), for clause (t), the following clause shall be substituted, namely: -

“(t) For the purposes of sub-clause (i) and sub-clause (ii) of clause (85) of section 2 of the Act, paid up capital and turnover of the small company shall not exceed rupees four crore and rupees forty crore respectively.”

Old Law (Pg 1.22)

As per the Companies (Specification of Definitions Details) Rules, 2014, for the purposes of sub-clause (i) and sub-clause (ii) of clause (85) of section 2 of the Act, paid up capital and turnover of the small company shall not exceed rupees **two crores** and rupees **twenty crores** respectively.

II. Chapter 2: Incorporation of company and matters incidental thereto

Notification S.O. 2904(E) dated 22nd July, 2021

The Central Government has amended section 16 of the Companies Act, 2013, through the Companies (Amendment) Act, 2020.

Amendment:

In **section 16** of the Companies Act, 2013:

(i) in sub-section (1), in clause (b), for the words "period of six months", the words "period of three months" shall be substituted;

(ii) for sub-section (3), the following sub-section shall be substituted, namely:—

"(3) If a company is in default in complying with any direction given under sub-section (1), the Central Government shall allot a new name to the company in such manner as may be prescribed and the Registrar shall enter the new name in the register of companies in place of the old name and issue a fresh certificate of incorporation with the new name, which the company shall use thereafter:

Provided that nothing in this sub-section shall prevent a company from subsequently changing its name in accordance with the provisions of section 13."

[Enforcement Date: 1st September, 2021]

For point (i)- Old Law (Pg 2.39)

(b) on an application by a registered proprietor of a trade mark that the name is identical with or too nearly resembles to a registered trade mark of such proprietor under the it may direct the company to change its name and the company shall change its name or new name, as the case may be, within a **period of 6 months** from the issue of such direction, after adopting an ordinary resolution for the purpose.

For point (ii)- Old Law (Pg 2.39)

If a company makes default in complying with any direction—

Liable person	Penalty/punishment
Company	Fine of 1,000 rupees for every day during which the default continues
Every Officer who is in default	Fine varying from 5,000 rupees to 1 lakh rupees.

III. Chapter 3: Prospectus and Allotment of Securities

Notification G.S.R. 338(E) dated 5th May, 2022

The Central Government has amended the Companies (Prospectus and Allotment of Securities) Rules, 2014, through the Companies (Prospectus and Allotment of Securities) Amendment Rules, 2022.

Amendment:

In the Companies (Prospectus and Allotment of Securities) Rules, 2014, —

in **rule 14**, in sub-rule (1), after the fourth proviso, the following proviso shall be inserted, namely:-

“Provided also that no offer or invitation of any securities under this rule shall be made to a body corporate incorporated in, or a national of, a country which shares a land border with India, unless such body corporate or the national, as the case may be, have obtained Government

approval under the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 and attached the same with the private placement offer cum application letter.”.

Old Law (Pg 3.39)

The proviso is newly inserted after the fourth proviso to Rule 14(1), “in case of offer such buyers during the year”.

IV. Chapter 5: Acceptance of Deposits by Companies

Notification G.S.R. 663(E) dated 29th August, 2022

The Central Government has amended the Companies (Acceptance of Deposits) Rules, 2014, through the Companies (Acceptance of Deposits) Amendment Rules, 2022.

Amendment:

In **rule 16**, after the words – “auditor of the company”, the words, letters and figure – “and declaration to that effect shall be submitted by the auditor in Form DPT-3” shall be inserted.

Old Law (Pt 20 on Pg 5.16) and (Pt 19 on Pg 5.24)

The words are to be inserted in pt 20 on page 5.16 and in pt 19 on page 5.24

A duly audited return of deposits in DPT-3 (containing particulars as on 31st March of every year) shall be filed with the Registrar of Companies along with requisite fee on or before the 30th June of that year.

V. Chapter 6: Registration of Charges

A. Notification S.O. G.S.R. 320 (E) dated 27th April, 2022

The Central Government has amended the Companies (Registration of Charges) Rules, 2014, through the Companies (Registration of Charges) Amendment Rules, 2022.

Amendment:

In **rule 3**, after sub-rule (4), the following sub-rule shall be inserted, namely:—

"(5) Nothing contained in this rule shall apply to any charge required to be created or modified by a banking company under section 77 in favour of the Reserve Bank of India when any loan or advance has been made to it under sub-clause (d) of clause (4) of section 17 of the Reserve Bank of India Act, 1934."

Old Law (Pg 6.6)

Sub- rule (5) is newly inserted

B. Notification G.S.R. 664 (E) dated 29th August, 2022

The Central Government has amended the Companies (Registration of Charges) Rules, 2014, through the Companies (Registration of Charges) Second Amendment Rules, 2022.

Amendment:

In the Companies (Registration of Charges) Rules, 2014, after rule, 12, the following rule shall be inserted, namely:-

“13. Signing of charge e-forms by insolvency resolution professional or resolution professional or liquidator for companies under resolution or liquidation.-

The Form No.CHG-1, CHG-4, CHG-8 and CHG-9 shall be signed by Insolvency resolution professional or resolution professional or liquidator for companies under resolution or liquidation, as the case may be and filed with the Registrar.”

Old Law

Rule 13 is newly inserted

VI. Chapter 7: Management and Administration

Notification S.O. G.S.R. 279(E) dated 6th April, 2022

The Central Government has amended the Companies (Management and Administration) Rules, 2014, through the Companies (Management and Administration) Amendment Rules, 2022.

Amendment:

in **rule 14**, after sub-rule (2), the following sub-rule shall be inserted, namely: —

"(3) Notwithstanding anything contained in sub-rules (1) and (2), the following particulars of the register or index or return in respect of the members of a company shall not be made available for any inspection under sub-section (2) or for taking extracts or copies under sub-section (3) of section 94, namely: —

- (i) address or registered address (in case of a body corporate);
- (ii) e-mail ID
- (iii) Unique Identification Number
- (iv) PAN Number

Old Law (Pg 7.21)

Sub- rule (3) of Rule 14 is newly inserted

VII. Chapter 8: Declaration and Payment of Dividend

Notification No. G.S.R. 396(E) dated 9th June, 2021

The Central Government has amended the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016, through the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Amendment Rules, 2021.

Amendment:

In **rule 3**, in sub-rule (2), after clause (f), the following shall be inserted, namely:-

“(fa) all shares held by the Authority in accordance with proviso of sub-section (9) of section 90 of the Act and all the resultant benefits arising out of such shares, without any restrictions;”

Old Law (Pg 8.21)

Clause (fa) is newly inserted

VIII. Chapter 9: Accounts of Companies

A. The Ministry of Corporate Affairs has made clarifications with respect to CSR:

General Circular No. 09/2021 Dated 5th May, 2021

1. In continuation to this Ministry's General Circular No. 10/2020 dated 23.03.2020, wherein it was clarified that spending of CSR funds for COVID-19 is an eligible CSR activity, it is further clarified that spending of CSR funds for 'creating health infrastructure for COVID care', 'establishment of medical oxygen generation and storage plants', 'manufacturing and supply of Oxygen concentrators, ventilators, cylinders and other medical equipment for countering COVID-19' or similar such activities are eligible CSR activities under item nos. (i) and (xii) of Schedule VII of the Companies Act, 2013 relating to promotion of health care, including preventive health care, and, disaster management respectively.

2. Reference is also drawn to item no. (ix) of Schedule VII of the Companies Act, 2013 which permits contribution to specified research and development projects as well as contribution to public funded universities and certain Organisations engaged in conducting research in science, technology, engineering, and medicine as eligible CSR activities.

3. The companies including Government companies may undertake the activities or projects or programmes using CSR funds, directly by themselves or in collaboration as shared responsibility with other companies, subject to fulfillment of Companies (CSR Policy) Rules, 2014 and the guidelines issued by this Ministry from time to time.

General Circular 13/2021 dated 30th July, 2021

The Ministry of Corporate Affairs vide General Circular 10/2020 dated 23.03.2020 clarified that spending of CSR funds for COVID- 19 is an eligible CSR activity. In continuation to the said circular, it is further clarified that spending of CSR funds of COVID- 19 vaccination for persons other than the employees and their families, is an eligible CSR activity under item no. (i) of

Schedule VII of the Companies Act, 2013 relating to promotion of health care including preventive health care and item no. (xii) relating to disaster management.

General Circular 08/2022 dated 26th July, 2022

Subject: Clarification on spending of CSR funds for 'Har Ghar Tiranga' campaign reg.

'Har Ghar Tiranga', a campaign under the aegis of Azadi Ka Amrit Mahotsav, is aimed to invoke the feeling of patriotism in the hearts of the people and to promote awareness about the Indian National Flag. In this regard, it is clarified that spending of CSR funds for the activities related to this campaign, such as mass scale production and supply of the National Flag, outreach and amplification efforts and other related activities, are eligible CSR activities under item no. (ii) of Schedule VII of the Companies Act, 2013 pertaining to promotion of education relating to culture.

The companies may undertake the aforesaid activities, subject to fulfilment of the Companies (CSR Policy) Rules, 2014 and related circulars/ clarifications issued by the Ministry thereof, from time to time.

Old Law (Pg 9.47)

The clarifications are newly inserted

B. Notification No. G.S.R. 107(E) dated 11th February 2022

The Central Government has amended the Companies (Accounts) Rules, 2014, through the Companies (Accounts) Amendment Rules, 2022.

Amendment:

in **rule 12**, after sub-rule (1A), the following sub-rule shall be inserted, namely: —

"(1B) Every company covered under the provisions of sub-section (1) to section 135 shall furnish a report on Corporate Social Responsibility in Form CSR-2 to the Registrar for the preceding financial year (2020-2021) and onwards as an addendum to Form AOC-4 or AOC-4 XBRL or AOC-4 NBFC (Ind AS), as the case may be:

Provided that for the preceding financial year (2020-2021), Form CSR-2 shall be filed separately on or before 31st March 2022, after filing Form AOC-4 or AOC-4 XBRL or AOC-4 NBFC (Ind AS), as the case may be."

Old Law (Pg 9.54)

Rule (1B) is newly inserted

C. Notification No. G.S.R. 235(E) dated 31st March 2022

The Central Government has amended the Companies (Accounts) Rules, 2014, through the Companies (Accounts) Second Amendment Rules, 2022.

Amendment:

In the Companies (Accounts) Rules, 2014,-

- (i) in the proviso to sub-rule (1) of rule 3, for the figures, letters and words “1st day of April, 2022”, the figures, letters and words “1st day of April, 2023” shall be substituted;
- (ii) in the proviso to sub-rule (1B) of rule 12, for the figures, letters and word “31st March, 2022”, the figures, letters and word “31st May, 2022” shall be substituted.

For point (i)- Old Law (Pg 9.5)

Provided that for the financial year commencing on or after the **1st day of April, 2022**, every company which uses accounting software for maintaining its books of account....

For point (ii)- Old Law

As covered above in point B.

Provided that for the preceding financial year (2020-2021), Form CSR-2 shall be filed separately on or before **31st March 2022**, after filing Form AOC-4 or AOC-4 XBRL or AOC-4 NBFC (Ind AS), as the case may be.

D. Notification No. G.S.R. 407(E) dated 31st May 2022

The Central Government has amended the Companies (Accounts) Rules, 2014, through the Companies (Accounts) Third Amendment Rules, 2022.

Amendment:

In the Companies (Accounts) Rules, 2014, in **rule 12**, in sub-rule (1B),-

- (i) for the figures, letters and word “31st May, 2022”, the figures, letters and word “30th June, 2022”, shall be substituted;
- (ii) after the proviso, the following proviso shall be inserted, namely:-

"Provided further that for the financial year 2021-2022, Form CSR-2 shall be filed separately on or before 31st March, 2023 after filing Form AOC-4 or AOC-4 XBRL or AOC-4 NBFC (Ind AS), as the case may be".

For point (i)- As covered above in point C.

Provided that for the preceding financial year (2020-2021), Form CSR-2 shall be filed separately on or before **31st May, 2022**, after filing Form AOC-4 or AOC-4 XBRL or AOC-4 NBFC (Ind AS), as the case may be.

For point (ii)- Old Law

The proviso is newly inserted.

E. Notification No. G.S.R. 624(E) dated 5th August, 2022

The Central Government has amended the Companies (Accounts) Rules, 2014, through the Companies (Accounts) Fourth Amendment Rules, 2022.

Amendment:

In the Companies (Accounts) Rules, 2014, in **rule 3**,-

- (i) in sub-rule (1), for the words “accessible in India”, the words “accessible in India, at all times,” shall be substituted;
- (ii) in sub-rule (5), in the proviso, for the words “periodic basis”, the words “daily basis” shall be substituted;
- (iii) in sub-rule (6), after clause (d), the following clause shall be inserted, namely: -
 “(e) where the service provider is located outside India, the name and address of the person in control of the books of account and other books and papers in India.”.

For point (i) - Old Law (Pg 9.5)

- (1) The books of account and other relevant books and papers maintained in electronic mode shall remain **accessible in India** so as to be usable for subsequent reference.

For point (ii) - Old Law (Pg 9.5)

- (5) The back-up of the books of account and other books and papers of the company maintained in electronic mode, including at a place outside India, if any, shall be kept in servers physically located in India on a **periodic basis**.

For point (iii) - Old Law (Pg 9.6)

- (e) is newly inserted in point (6)

F. Notification No. G.S.R. 715(E) dated 20th September, 2022

The Central Government has amended the Companies (Corporate Social Responsibility Policy) Rules, 2014, through the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2022.

Amendment:

1. In the Companies (Corporate Social Responsibility Policy) Rules, 2014, in **rule 3**,-

- (i) in sub-rule (1), after the proviso, the following proviso shall be inserted, namely: -
 “Provided further that a company having any amount in its Unspent Corporate Social Responsibility Account as per sub-section (6) of section 135 shall constitute a CSR

Committee and comply with the provisions contained in sub-sections (2) to (6) of the said section.”;

(ii) sub-rule (2) shall be omitted.

For point (i) - Old Law (Pg 9.35)

The proviso is newly inserted

For point (ii) - Old Law (Pg 9.36)

Exclusion of Companies [Rule 3(2) of the Companies (CSR) Rules, 2014]

Every company which ceases to be a company covered under subsection (1) of section 135 of the Act for three consecutive financial years shall not be required to-

(a) constitute a CSR Committee; and

(b) comply with the provisions contained in sub-section (2) to (6) of the said section,

till such time it meets the criteria specified in sub-section (1) of section 135.

2. In the Companies (Corporate Social Responsibility Policy) Rules, 2014, in **rule 4**, for sub-rule (1), the following sub-rule shall be substituted, namely: -

‘(1) The Board shall ensure that the CSR activities are undertaken by the company itself or through, -

(a) a company established under section 8 of the Act, or a registered public trust or a registered society, exempted under sub-clauses (iv), (v), (vi) or (via) of clause (23C) of section 10 or registered under section 12A and approved under 80 G of the Income Tax Act, 1961, established by the company, either singly or along with any other company; or

(b) a company established under section 8 of the Act or a registered trust or a registered society, established by the Central Government or State Government; or

(c) any entity established under an Act of Parliament or a State legislature; or

(d) a company established under section 8 of the Act, or a registered public trust or a registered society, exempted under sub-clauses (iv), (v), (vi) or (via) of clause (23C) of section 10 or registered under section 12A and approved under 80 G of the Income Tax Act, 1961, and having an established track record of at least three years in undertaking similar activities.

Explanation.- For the purpose of clause (c), the term “entity” shall mean a statutory body constituted under an Act of Parliament or State legislature to undertake activities covered in Schedule VII of the Act.’

Old Law (Pg 9.42)

(1) The Board shall ensure that the CSR activities are undertaken by the company itself or through-

(a) a company established under section 8 of the Act, or a registered public trust or a registered society, registered under section 12A and 80 G of the Income Tax Act, 1961, established by the company, either singly or along with any other company, or

(b) a company established under section 8 of the Act or a registered trust or a registered society, established by the Central Government or State Government; or

(c) any entity established under an Act of Parliament or a State legislature; or

(d) a company established under section 8 of the Act, or a registered public trust or a registered society, registered under section 12A and 80G of the Income Tax Act, 1961, and having an established track record of at least three years in undertaking similar activities.

3. In the Companies (Corporate Social Responsibility Policy) Rules, 2014, in rule 8, in sub-rule (3), in clause (c),-

(i) for the words “five percent”, the words “two per cent.” shall be substituted;

(ii) for the words “whichever is less”, the words “whichever is higher” shall be substituted.

Old Law (Pg 9.44)

(c) A Company undertaking impact assessment may book the expenditure towards Corporate Social Responsibility for that financial year, which shall not exceed **five percent** of the total CSR expenditure for that financial year or fifty lakh rupees, **whichever is less**.

PART – II : QUESTIONS AND ANSWERS

QUESTIONS

DIVISION A: CASE SCENARIO/ MULTIPLE CHOICE QUESTIONS

Modern Limited is a company limited by shares that manufactures furniture items apart from material used in modular kitchens. Modern Limited is an unlisted company with a registered office in Mumbai, Maharashtra. It has a corporate office in Delhi and branch offices throughout the country. Following are facts regarding the 18th annual general meeting (AGM) of Modern Limited.

Modern Limited is the lead sponsor of the furniture trade event India Furniture EXPO 2022 and a member of the Association of Furniture Manufacturers and Traders. Modern Limited, on behalf of the Association, booked the Expo Hall in Mumbai for the event and also decided to convene its 18th AGM at the same hall after the conclusion of EXPO 2022.

But later, they found that the India Furniture Expo 2022, which was scheduled to be held from September 16–19, 2022, had to be postponed as Bombay Municipal Corporation (BMC) continued to occupy the hall as a vaccination center. Therefore, Modern Limited has to rethink its plan and now convene its 18th annual general meeting on September 27, 2022, at the IMA Auditorium in Delhi, near its corporate office. All the members consented to same. The notice of the said meeting was posted on September 5, 2022, specifying place, date and day, in additions to business to be transacted. In case of Mr. Ashok, who is declared insolvent but undischarged, notice was sent to assignee, while a wilful omission was made in giving notice in case of Ms. Anjum.

At the meeting, Mr. Singh was elected as chairman of the meeting by a show of hands, while Mr. Manohar registered his dissent on the appointment of Mr. Singh as chairman of the meeting and sought a poll to elect the chairperson. Mr. Manohar has substantial voting right of company being part of promoter group. A poll was held to elect the chairman of the meeting, and Mr. Singh voted twice in his capacity as a member as well as chairman while the poll was taking place. Mr. Singh was elected chairman through the poll as well, by overwhelming majority.

Ms. Varnika, who is not a member of company, attended the meeting as Mr. Alok's proxy, voted both times: when Mr. Singh was elected by show of hands and when he was elected by poll. When she initially voted, she raised her hand in favour of electing Mr. Singh as chairman of the meeting, while during the election through a poll, she cast a vote against.

Mr. Manohar raises the question on a vote that is casted by Mr. Singh in his capacity as chairman, hence he pass the remarks on him and his allies; which can be considered defamatory in nature. Chairman at his opinion, instructed the company secretary to exclude the remarks passed by Mr. Manohar while preparing the minutes; but some members raised a voice against the discretion of Mr. Singh, because they find remarks didn't carry any matter which can be

considered defamatory, while some other members feel remarks are made with intent to defame chairman.

1. Regarding the notice of meeting given by Modern Limited, you are required to pick the correct option in light of provisions of the Companies Act, 2013 and rules notified thereunder.
 - I Modern Limited observe the length of notice, as required.
 - II Notice shall be given to member irrespective he is solvent, adjudged or declared insolvent, or discharged insolvent; Modern Limited committed default
 - III Notice shall be given to assignee of insolvent member, Modern Limited correctly did so
 - IV Wilful omission in giving notice will invalidate the proceeding of the meeting in case of Modern Limited

Options

- (a) Only I, II and IV are correct
 - (b) Only III and IV are correct
 - (c) Only I is correct
 - (d) Only IV is correct
2. Regarding the place of 18th AGM of Modern Limited, decide whether applicable provisions violated or not; in light of provisions of the Companies Act, 2013 and rules notified thereunder.
 - (a) Violation, because Modern Limited shall convene and conduct AGM only at its registered office
 - (b) Violation, because AGM shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situate
 - (c) No violation, because AGM shall be held either at the register or corporate office of the company or even at some other place within the city, town or village in which the registered or corporate office of the company is situate
 - (d) No violation, because AGM of the said company may be held at any place in India
 3. Regarding vote casted by Ms Varnika, which of following statements hold truth; in light of provisions of the Companies Act, 2013 and rules notified thereunder.
 - (a) Being proxy Ms. Varnika is not allowed to cast vote on a poll, while she can cast vote by show of hand
 - (b) Being proxy Ms. Varnika is not allowed to cast vote by show of hand, while she can cast vote on a poll

- (c) Despite being non-member Ms. Varnika can be proxy, but can't cast vote either by show of hand or on a poll
 - (d) Ms. Varnika can cast vote in both the cases; by show of hand as well as on a poll
4. Regarding the inclusion/exclusion of the remarks by Mr. Manohar, advice the company secretary; which of the following statement hold truth, in light of provisions of the Companies Act 2013 and rules notified thereunder.
- (a) Mr. Manohar's remark shall be included in minutes because minutes shall contain fair summary of the proceedings.
 - (b) Mr. Manohar's remark shall be excluded from minutes because remarks are made with intent to defame chairman, the chairman's opinion of inclusion and exclusion is immaterial in such case.
 - (c) Mr. Manohar's remark shall be excluded from minutes because chairman has absolute discretion to exclude any matter which is defamatory in his opinion
 - (d) Mr. Manohar's remark shall be included in minutes because many members challenge the chairman's opinion and feels remarks were not defamatory.
5. _____ is the cardinal rule of construction that words, sentences and phrases of a statute should be read in their ordinary, natural and grammatical meaning so that they may have effect in their widest amplitude.
- (a) Rule of Literal Construction
 - (b) Rule of Harmonious Construction
 - (c) Rule of Beneficial Construction
 - (d) Rule of Exceptional Construction
6. ABC Limited has its shares listed on a recognized stock exchange in India. During the current financial year ending on 31st March 2023, the Securities and Exchange Board of India (SEBI) has found some irregularities in the filings made by the company. Accordingly, SEBI proposes to make an application to the Tribunal for reopening of the books of accounts of the Company. You, as an expert, are called upon by SEBI to advise with which last financial year for reopening of books of accounts an application can be made?
- (a) 2018-2019
 - (b) 2016-2017
 - (c) 2013-2014
 - (d) 2014-2015
7. The amount accumulated in the Investor Education and Protection Fund shall not be used for:
- (a) refunds in respect of unclaimed dividends, matured deposits, matured debentures, application money due for refund and interest thereon.

- (b) reimbursement of legal expenses incurred in pursuing class action suits under section 37 and 245.
 - (c) grants or donation to the Central Government for the purpose of investor's education and training.
 - (d) distribution of any disgorged amount among eligible and identifiable applicants who have suffered losses.
8. Which among the following will not be considered as a "Foreign Instrument" under the provisions of the Negotiable Instruments Act, 1881?
- (a) A bill drawn on a person residing outside India but payable in India or outside India
 - (b) A bill drawn on a person resident outside India but payable outside India
 - (c) A bill drawn on a person residing outside India but payable in India
 - (d) A bill drawn on a person resident in India but payable outside India
9. Who cannot inspect the register of charges and instrument of charges, during business hours, without paying any fees:
- (a) Any member of the company
 - (b) The Creditor of the company
 - (c) Persons other than member and creditor of the company
 - (d) No person is allowed to inspect the register of charges
10. As per the provisions of the Companies Act, 2013 and relevant rules thereunder, an eligible company is not permitted to accept from public or renew the same deposits (whether secured or unsecured) which is repayable on demand or in less than _____ months. Further, the maximum period of acceptance of deposit cannot exceed _____ months. But, for the purpose of meeting any of its short- term requirements of funds, a company may accept or renew deposits for repayment earlier than _____ months subject to certain conditions.
- (a) six, thirty six, six
 - (b) three, twenty four, three
 - (c) six, sixty, six
 - (d) three, sixty, six

DIVISION B: DESCRIPTIVE QUESTIONS

PART I: COMPANY LAW

The Companies Act, 2013

11. Hastprat Ltd. is an unlisted public company, having five directors in its board which includes two independent directors.

Sankul (P) Ltd., is subsidiary company of Hastprat Ltd., actively carrying on its business, having paid up capital of ₹ 1.5 crore with 40 members and turnover of ₹ 18 crore, respectively and the said company is not a start-up company.

In the context of aforesaid case-scenario, please answer to the following question(s):-

Whether Sankul (P) Ltd. is mandatorily required to prepare cash flow statement for the financial year as a part of its financial statements?

Provide your answer by analyzing Sankul (P) Ltd. into following category of companies:-

- (i) One person company, (ii) Small company, (iii) Dormant company and (iv) Private company, respectively.
12. Aman an engineer has started a new company with the name of Nuts and Bolts Private Limited. He got registered a company with the same name. However, Nuts and Bolts is a registered trademark. After 5 years when the owner of trademark came to know about the same, it filed an application with relevant authority. Can the company be compelled to change its name by the owner of trademark? Can the owner of registered trademark request the company and then company change its name at its discretion?
13. Yellow Ltd. received a communication from Central Government for preparation of periodical financial results and complete audit or limited review of such periodical financial results. The Board of Directors have raised an objection on the ground that as it is an unlisted company, periodical financial results need not to be prepared. Examine, referring the provisions of the Companies Act, 2013, in this regard.
14. Upkaar Nidhi Ltd., was about to hold an AGM on 25th August, 2022, for which the notice of AGM along with relevant documents, as prescribed, was sent to all its members including the following:-

Sr. No.	Particulars
1	A member individually holding shares with face value of ₹ 800 which amounted to 0.16% of the total paid-up share capital.
2	Two members jointly holding shares with face value of ₹ 1,600 which amounted to 0.32% of the total paid-up share capital.

3	Forty-two members each holding individually shares with face value of ₹ 600 which amounted to holding 0.12% of the total paid-up share capital for each such member.
4	All the remaining members holding individually more than 1.2% of the total paid-up share capital of the company.

In the AGM held on 25th August, 2022, the members were not provided with the facility to vote by electronic means.

In the context of aforesaid case-scenario, please answer whether Upkaar Nidhi Ltd. was required to send the notice of AGM along with relevant documents to all its members as aforesaid?

15. Answer the following citing relevant provisions of the Companies Act, 2013:
- (a) Wire Electricals Limited having paid-up capital of ₹ 1.00 crore availed a term loan of ₹ 10,00,000 from ABC Bank Limited to purchase electrical items. Mr. Taar, one of the directors of the company, is of the opinion that it shall be considered as 'deposit'. Is his contention correct?
- (b) A Government Company, which is eligible to accept deposits under Section 76 of the Companies Act, 2013, cannot accept deposits from public exceeding 25% of the aggregate of its paid-up capital, free reserves and security premium account. Is this correct?
16. Red Limited (the Company) was incorporated on 01.04.2020. The balances extracted from its audited financial statement are as given below:

Financial Year (FY)	Net Profit before tax	Net Profit after tax (Ignore Income Tax computation)
2020-21	₹ 5.00 crore	₹ 3.75 crore
2021-22	₹ 7.00 crore	₹ 5.25 crore

The Company proposes to allocate the minimum required amount for CSR Activities to be undertaken during FY 2022-23, if it is mandatory. You are requested to advise the Company in this regard and compute the minimum amount to be allocated, if so required, taking into account the relevant provisions of the Companies Act, 2013.

PART II: OTHER LAWS

The Indian Contract Act, 1872

17. Mr. Salil purchased furniture of worth ₹ 1,00,000 from Mr. Pooran on credit. Mr. Raman entered in contract with Mr. Pooran for the guarantee of the payment by Mr. Salil. On due date, Mr. Salil could not make the payment due to his financial crisis. Mr. Pooran filed the suit against Mr. Raman for payment. Meanwhile father of Mr. Salil paid ₹ 20,000 to

Mr. Pooran on behalf of his son. Mr. Raman, in ignorance of above payment, paid ₹1,00,000 to Mr. Pooran as surety. Afterwards, when Mr. Raman knew the facts, he asked Mr. Pooran for refund of ₹ 20,000. Mr. Pooran denied for refund with the words, that's only Mr. Salil who can claim the amount of ₹ 20,000. Explain, with reference to Indian Contract Act 1872, whether Mr. Raman (surety) can claim the refund of ₹ 20,000 from Mr. Pooran?

The Negotiable Instruments Act, 1881

18. A bill of exchange is drawn payable to 'Amir' or order. 'Amir' endorses it to 'Rani', 'Rani' to 'Kajol', 'Kajol' to 'Sharukh', 'Sharukh' to 'Madhuri' and 'Madhuri' to 'Amir'. State with reasons under the provisions of the Negotiable Instrument Act, 1881 whether 'Amir' can recover the amount of the bill from 'Rani', 'Kajol', 'Sharukh' and 'Madhuri', if he has originally endorsed the bill to 'Rani' by adding the words 'Sans Recourse'.

The General Clauses Act, 1897

19. M owned a land with fifty tamarind trees. He sold his land and the timber (obtained after cutting the fifty trees) to N. M wants to know whether the sale of timber tantamount to sale of immovable property. Advise him with reference to provisions of the General Clauses Act, 1897.

Interpretation of Statutes

20. When can the Preamble be used as an aid to interpretation of a statute?

SUGGESTED ANSWERS

ANSWERS

1. (b)
2. (d)
3. (b)
4. (c)
5. (a)
6. (d)
7. (c)
8. (d)
9. (c)
10. (a)

11. According to section 2(10) of the Companies Act, 2013,

Financial statement in relation to a company, includes—

- (i) a balance sheet as at the end of the financial year;
- (ii) a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;
- (iii) cash flow statement for the financial year;
- (iv) a statement of changes in equity, if applicable; and
- (v) any explanatory note annexed to, or forming part of, any document referred to in sub-clause (i) to sub-clause (iv):

Provided that the financial statement, with respect to one person company, small company, dormant company and private company (if such private company is a start-up) may not include the cash flow statement.

For considering the applicability of preparation cash flow statement in case of Sankul (P) Ltd., it is required first to be analyzed that Sankul (P) Ltd. does not fall in any of the categories of companies mentioned under proviso to section 2(10) of the Companies Act, 2013:

- (i) One person company – It is given that the company is having 40 members and also its name does not contain the words ‘OPC’, so it is not a one person company.
- (ii) Small company – A company which is a subsidiary company cannot be categorized as a small company as per proviso to section 2(85) even though its paid up capital and turnover are within the prescribed limits and accordingly, as Sankul (P) Ltd. is a subsidiary company of Hastprat Ltd., it cannot be considered as small company also.
- (iii) Dormant company – It is given that the company is actively carrying on its business, so it cannot be also categorized as a dormant company based upon the facts given.
- (iv) Private company (which is a start-up) – It is given that Sankul (P) Ltd. is not a start-up company and also, as per proviso to section 2(71) of the Act, a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles.

So, Sankul (P) Ltd. shall be deemed to be a public company as it is subsidiary of Hastprat Ltd., an unlisted public company and so it will not fall into this category of exemption as well.

Thus, it can be concluded that Sankul (P) Ltd. is mandatorily required to prepare cash flow statement for the financial year as a part of its financial statements as it does not fall in any of the categories of companies mentioned under proviso to section 2(10) of the Companies Act, 2013.

12. According to section 16 of the Companies Act, 2013 if a company is registered by a name which,—

- ◆ in the opinion of the Central Government, is identical with the name by which a company had been previously registered, it may direct the company to change its name. Then the company shall by passing an ordinary resolution change its name within 3 months.
- ◆ is identical with a registered trade mark and owner of that trade mark apply to the Central Government within three years of incorporation of registration of the company, it may direct the company to change its name. Then the company shall change its name by passing an ordinary resolution within 3 months.

Company shall give notice to ROC along with the order of Central Government within 15 days of change. In case of default company and defaulting officer are punishable.

In the given case, owner of registered trade-mark is filing objection after 5 years of registration of company with a wrong name. While it should have filed the same within 3 years. Therefore, the company cannot be compelled to change its name.

As per section 13, company can anytime change its name by passing a special resolution and taking approval of Central Government. Therefore, if owner of registered trademark request the company for change of its name and the company accepts the same then it can change its name voluntarily by following the provisions of section 13.

13. Periodical Financial Results [Section 129A of the Companies Act, 2013]

The Central Government may, require such class or classes of unlisted companies, as may be prescribed,—

- (a) to prepare the financial results of the company on periodical basis and in prescribed form
- (b) to obtain approval of the Board of Directors and complete audit or limited review of such periodical financial results in the prescribed manner; and
- (c) file a copy with the Registrar within a period of thirty days of completion of the relevant period with such fees as may be prescribed.

Therefore, the objection of the Board of Directors on the ground that as Yellow Ltd. is an unlisted company, periodical financial results need not be prepared, is not correct. Section 129A clearly specifies that even unlisted company has to prepare Periodical Financial Results.

14. In case of Nidhi company –

Section 136 (1) of the Companies Act, 2013, shall apply, subject to the modification that, in the case of members who do not individually or jointly hold shares of more than one thousand rupees in face value or more than one per cent, of the total paid-up share capital, whichever is less, it shall be sufficient compliance with the provisions of the section if an

intimation is sent by public notice in newspaper circulated in the district in which the Registered Office of the company is situated stating the date, time and venue of AGM and the financial statement with its enclosures can be inspected at the registered office of the company and the financial statement with enclosures are affixed in the notice board of the company and a member is entitled to vote either in person or through proxy.

Here, Upkaar Nidhi Ltd. was only required to send such notice of AGM and other relevant documents to members who individually or jointly hold shares of more than ₹ 1,000 in face value or more than 1%, of the total paid-up share capital, whichever is less. Accordingly, Upkaar Nidhi Ltd. would have send notice and other relevant documents to only following category of members:-

- (i) Two members jointly holding shares with face value of ₹ 1,600 which amounted to 0.32% of the total paid-up share capital
- (ii) All the remaining members holding individually more than 1.2% of the total paid-up share capital of the company.

For the category of members mentioned in Sr. no. 1 & 3, of the aforesaid table given in case scenario, it would have been sufficient compliance if an intimation for the AGM was sent in the newspaper as per the provisions, as aforesaid, and there was no need to send the notice of AGM along with relevant documents to such category of members personally.

15. (a) In terms of Rule 2 (1) (c) (iii) of the Companies (Acceptance of Deposits) Rules, 2014, any amount received as a loan or facility from any banking company shall not be considered as 'deposit'.

In view of the above, the contention of Mr. Taar that the term loan of ₹ 10,00,000 availed by the company from ABC Bank Limited shall be considered as 'deposit' is not correct.

- (b) As per Rule 3 (5) of the Companies (Acceptance of Deposits) Rules 2014, a Government Company is not eligible to accept or renew deposits under section 76, if the amount of such deposits together with the amount of other deposits outstanding as on the date of acceptance or renewal exceeds thirty five per cent of the aggregate of its paid-up share capital, free reserves and securities premium account.

Therefore, the given statement where the limit of 25% has been stated for acceptance of deposits is not correct.

16. According to section 135(1) of the Companies Act, 2013, every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during the immediately preceding financial year shall constitute a Corporate Social Responsibility Committee of the Board.

Further, according to section 135(5), the Board of every company referred to in sub-section (1), shall ensure that the company spends, in every financial year, at least two per cent. of the average net profits of the company made during the three immediately preceding

financial years or where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy.

Here, the “Net Profit” shall not include such sums as may be prescribed, and shall be calculated in accordance with the provisions of section 198.

In the instant case,

1. Net Profit before tax of Red Limited for the FY 2021-22 is ₹ 7 crore, hence, Red Limited is required to constitute a CSR committee during FY 2022-23 as the Net profit before tax for the FY exceeds ₹ 5 crore.
2. Minimum contribution towards CSR will be: 2% of average net profits since incorporation (Red Limited was incorporated on 1.04.2020.)

Average Net Profit since incorporation: $(₹ 5 \text{ crore} + ₹ 7 \text{ crore}) / 2 = ₹ 6 \text{ crore}$

Minimum contribution towards CSR will be: 2% of ₹ 6 crore = ₹ 0.12 crore or ₹ 12 Lacs.

17. As per the provisions of section 128 of the Indian Contract Act, 1872, the liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract. In other words, the surety is liable for all those amounts, the principal debtor is liable for.

In the given question, before Mr. Raman makes the payment (on default of Mr. Salil), the father of Mr. Salil paid ₹ 20,000 to Mr. Pooran on behalf of his son. Unaware of the payment of ₹ 20,000, Mr. Raman paid the full amount to Mr. Pooran.

The liability of Mr. Raman (surety) is co-extensive with that of Mr. Salil (principal debtor). As the father of Mr. Salil made payment of ₹ 20,000 on Salil's behalf, Mr. Raman is liable only for ₹ 80,000 to Mr. Pooran (creditor). Mr. Raman made the full payment without the knowledge of facts. Therefore, he can claim the refund of ₹ 20,000 from Mr. Pooran.

18. In the course of negotiation, if a negotiable instrument is circulated/negotiated back by an indorser to any of the prior party on the negotiable instruments, it is termed as negotiation back. The person who becomes the holder in due course under this negotiation back cannot make any of the intermediate indorsers liable on the instruments. But where an indorser had excluded his liability, by the use of the words ‘sans recourse’ or ‘without recourse to me’ and after that becomes the holder of the instrument in his own right under the ‘negotiation back’ all intermediate indorsers are liable to him and in case of dishonour, he can recover the amount from all or any one of them.

In the given question, on the basis of above facts it is clear that ‘Amir’, the endorser becomes the holder after it is negotiated to several parties. In normal situation none of the intermediate parties would be liable to ‘Amir’. But in the given problem ‘Amir’s original endorsement is ‘sans recourse’ and therefore, he is not liable to ‘Rani’, ‘Kajol’, ‘Sharukh’ and ‘Madhuri’. But if the bill is negotiated back to ‘Amir’, all of them are liable to him and he can recover the amount from all or any of them.

19. **“Immovable Property”** [Section 3(26) of the General Clauses Act, 1897]: ‘Immovable Property’ shall include:

- (i) Land,
- (ii) Benefits to arise out of land, and
- (iii) Things attached to the earth, or
- (iv) Permanently fastened to anything attached to the earth.

It is an inclusive definition. It contains four elements: land, benefits to arise out of land, things attached to the earth and things permanently fastened to anything attached to the earth. Where, in any enactment, the definition of immovable property is in the negative and not exhaustive, the definition as given in the General Clauses Act will apply to the expression given in that enactment.

In the instant case, M sold Land along with timber (obtained after cutting trees) of fifty tamarind trees of his land. According to the above definition, Land is immovable property; however, timber cannot be immovable property since the same are not attached to the earth.

20. While the Preamble can be used to know the aims and objects of the legislation it cannot be used to control or qualify the precise and unambiguous language of an enactment. The preamble is the key to the mind of the maker of the law, but it cannot override in order to enlarge or restrict the enacting provision of the Act. A provision contained in the Act cannot be considered as invalid because they do not accord with the preamble, which is only a brief summary of legislative objectives behind the Act, and if there is any conflict between the preamble and any provision of an Act, the provision prevails.

The preamble merely affords help in the matter of construction if there is any ambiguity. Where the language of the Act is clear, the court is bound to give it effect.

When will courts refer to the preamble as an aid to construction?

Situation 1: Where there is any ambiguity in the words of an enactment the assistance of the preamble may be taken to resolve the conflict.

Situation 2: Where the words of an enactment appear to be too general in scope or application then courts may resort to the preamble to determine the scope or limited application for which the words are meant.